



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 23, 2010

Mr. David Mendoza  
Assistant District Attorney  
Hays County Justice Center  
110 East Martin Luther King  
San Marcos, Texas 78666

OR2010-14482

Dear Mr. Mendoza:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 394669.

Hays County (the "county") received two requests for the personnel file of a named lieutenant with the Hays County Sheriff's Office. You state the county has released some information to the requestor. We note you have redacted a social security number pursuant to the previous determination issued to all governmental bodies in Open Records Decision No. 670 (2001) and a Texas driver's license number pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> You claim portions of the submitted personnel file are excepted from disclosure under sections 552.101, 552.117, and 552.142 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't

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<sup>1</sup>Open Records Decision No. 670 authorizes all governmental bodies to withhold the home addresses and telephone numbers, personal cellular telephone and pager numbers, social security numbers, and family member information of peace officers under section 552.117(a)(2) of the Government Code, without the necessity of requesting an attorney general decision. This office recently issued Open Records Decision No. 684, a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

Code § 552.101. Section 552.101 encompasses section 1324a of title 8 of the United States Code. This section provides that an Employment Eligibility Verification I-9 Form “may not be used for purposes other than for enforcement of this chapter” and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). You have marked an I-9 form in the submitted documents. Release of this form in this instance would be “for purposes other than for enforcement” of the referenced federal statutes. Accordingly, we find the I-9 form you marked is confidential under section 1324a of title 8 of the United States Code and may only be released in compliance with the federal laws and regulations governing the employment verification system.<sup>2</sup>

Section 552.101 of the Government Code also encompasses information protected by chapter 411 of the Government Code, which deems confidential criminal history record information (“CHRI”). CHRI is defined as “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” Gov’t Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. *See* Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10-12. Sections 411.083(b)(1) and 411.089 (a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *See* Gov’t Code § 411.089(b)(1). Upon review, we find the CHRI we marked must be withheld pursuant to section 552.101 in conjunction with section 411.083 of the Government Code.<sup>3</sup>

Section 552.101 of the Government Code also encompasses section 1703.306 of the Occupations Code. Section 1703.306 provides:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

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<sup>2</sup>We note Open Records Decision No. 684 also authorizes governmental bodies to withhold an I-9 form under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code without the necessity of requesting an attorney general decision. As our ruling is dispositive, we need not address your argument under section 552.101 in conjunction with common-law privacy for this information.

<sup>3</sup>As our ruling is dispositive, we need not address your argument under section 552.101 in conjunction with common-law privacy for this information.

- (1) the examinee or any other person specifically designated in writing by the examinee;
  - (2) the person that requested the examination;
  - (3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner's activities;
  - (4) another polygraph examiner in private consultation; or
  - (5) any other person required by due process of law.
- (b) The [Polygraph Examiners] Board or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.
- (c) A polygraph examiner to whom information acquired from a polygraph examination is disclosed under Subsection (a)(4) may not disclose the information except as provided by this section.

Occ. Code § 1703.306. We have marked information that was acquired from a polygraph examination and is, therefore, within the scope of section 1703.306. The requestor does not fall into any of the categories of individuals who are authorized to receive the polygraph information under section 1703.306(a). Thus, the county must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.

You have also marked information you seek to withhold under section 552.117 of the Government Code. Section 552.117(a)(2) excepts from public disclosure the home address, home telephone number, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code. Gov't Code § 552.117(a)(2). Section 552.117(a)(2) is also applicable to a peace officer's cellular telephone number, if the cellular telephone service is paid for by the officer with his or her own funds. *See* Open Records Decision No. 670 at 6 (2001) (extending section 552.117(a)(2) exception to personal cellular telephone numbers of peace officers). Upon review, we agree some of the information you marked, and the additional information we marked, must be withheld pursuant to section 552.117(a)(2). You have not explained, nor can we discern, the applicability of section 552.117 to the remaining information you marked; thus, that information may not be withheld under section 552.117(a)(2).

You have also marked information you seek to withhold under section 552.142 of the Government Code. Section 552.142 pertains to records of certain deferred adjudications. This section provides:

(a) Information is excepted from the requirements of Section 552.021 if an order of nondisclosure with respect to the information has been issued under Section 411.081(d) or (f-1).

(b) A person who is the subject of information that is excepted from the requirements of Section 552.021 under this section may deny the occurrence of the arrest and prosecution to which the information relates and the exception of the information under this section, unless the information is being used against the person in a subsequent criminal proceeding.

Gov't Code § 552.142. Section 411.081(d) of the Government Code authorizes a person placed on deferred adjudication for certain offenses to petition the court "for an order of nondisclosure," which prohibits criminal justice agencies from disclosing to the public criminal history record information related to the offense giving rise to the deferred adjudication. *Id.* § 411.081(d). Under this provision, a criminal justice agency may only disclose criminal history record information that is the subject of the order to other criminal justice agencies, for criminal justice or regulatory purposes; non-criminal justice agencies listed in section 411.081(i); or the person who is the subject of the order. *Id.* Although you generally assert the information you marked is excepted from public disclosure pursuant to section 552.142, you have not provided any documentation showing that an order of nondisclosure was issued pursuant to section 411.081(d) of the Government Code prohibiting the release of the information at issue. Thus, we find the county has failed to demonstrate the applicability of section 552.142 to this information.

We note the remaining information contains an e-mail address of a member of the public. Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). The e-mail address we marked is not specifically excluded by section 552.137(c). As such, this e-mail address must be withheld under section 552.137, unless the owner of the address has affirmatively consented to its release. *See id.* § 552.137(b).

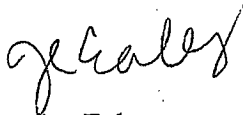
In summary, the I-9 form you marked is confidential under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code and may only be released in compliance with the federal laws and regulations governing the employment verification system. The CHRI we marked must be withheld pursuant to section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The polygraph information we marked must be withheld under section 552.101 of the Government Code in conjunction with section 1703.306 of the

Occupations Code. The personal information of a peace officer we marked must be withheld under section 552.117 of the Government Code. The e-mail address we marked must be withheld under section 552.137 of the Government Code, unless the owner of the address has affirmatively consented to its release. The remaining information must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jessica Eales  
Assistant Attorney General  
Open Records Division

JCE/em

Ref: ID# 394669

Enc. Submitted documents

c: Requestor  
(w/o enclosures)